MANSFIELD in *Price* v. *Neal*, 3 Burr. 1355. It has been followed by the principal case and many of the courts in this country. *National Bank of Commerce in St. Louis* v. *Mechanics American Nat. Bank*, 148 Mo. App. 1, 127 S. W. 429; *Northwestern Nat. Bank* v. *Bank of Commerce of Kansas City*, 107 Mo. 402, 17 S. W. 982; *Jones* v. *Miners' & Merchants' Bank*, 144 Mo. App. 428, 128 S. W. 829; *Bank of Williamson* v. *McDowell County Bank*, 66 W. Va. 545, 66 S. E. 761; *Redington* v. *Woods*, 45 Cal. 406, 13 Am. Rep. 190; *First Nat. Bank of Quincy* v. *Ricker*, 71 Ill. 439, 22 Am. Rep. 104; *National Bank* v. *Ninth National Bank*, 46 N. Y. 77; *Ellis* v. *Ohio Life Ins. Co.*, 4 Ohio St. 628, 64 Am. Dec. 610. The reason of the rule is that a drawee is bound to know the signature of the drawer. The rule in *Price* v. *Neal, supra,* has been criticised as inequitable and fundamentally wrong (2 MORSE, BANKS & BANKING, § 464). Many of the text-writers on negotiable instruments declare that when a bank, upon which a check is drawn, pays it upon the forged signature of the drawer, the money can be recovered as paid under mistake of fact. STORY, PROMISSORY NOTES, §§ 379-529; 2 PARSONS, NOTES AND BILLS, pp. 80 to 81. There is a line of decisions stating the rule as follows: "The drawee of a forged check, who has paid the same, may, upon discovery of the forgery, recover the money paid from the party who received it, even though the latter was a holder in due course, provided the latter has not been misled or prejudiced by the failure of the drawee at the time of payment to detect the forgery, and that the burden of showing that he has been misled or prejudiced is upon the party claiming the right to retain the money." *First Nat. Bk. of Lisbon* v. *Wyndmere Bank*, 15 N. D. 299, 108 N. W. 546; *Canadian Bank* v. *Bingham*, 30 Wash. 484, 71 Pac. 43, 60 L. R. A. 955; *American Express Co.* v. *State Nat. Bank* (Okl.) 113 Pac. 711; *First Nat. Bk. of Danvers* v. *Salem Bank*, 151 Mass. 280, 24 N. E. 44, 21 Am. St. Rep. 450. This rule is more equitable. It is clear that if the drawee should discover the forgery at the time of presentment, payment would be refused. To allow the drawee to recover payment on discovering the forgery after payment will not place the holder in a worse position than he would be if the forgery had been detected at the time of presentment.

BILLS AND NOTES—INVALIDITY OF NOTE—RECOVERY UPON ORIGINAL CONSIDERATION.—George T. Smiley and Alfred Larsen were partners doing business under the firm name, Smiley and Larsen. Smiley, the financial manager, gave to P bank a partnership note after Larsen sold out his interest in the tangible copartnership property, and after this fact and the request by Larsen not to loan any more money to the copartnership had been communicated to the bank. The note was given to pay partnership checks issued before Larsen withdrew from the firm. The bank sued both partners on the note. *Held,* that the bank could recover against the copartners upon the original obligation in the amount of the unauthorized note, notwithstanding its invalidity. *First Nat'l. Bank of Antigo* v. *Larsen et al.* (Wis. 1911) 132 N. W. 610.

An action can be maintained on the original consideration of a promissory note, although the note itself is invalid. *Humphreys* v. *Wilson*, 43 Miss. 328; *Edgell* v. *Stanford*, 6 Vt. 551; *Councilman* v. *Towson Nat. Bank*, 103 Md.

469, 64 Atl. 358. There is a slight difference between the principal case and the cases cited above. In those cases recovery was allowed on the common counts while in the principal case, the recovery was, in form, on the note itself, the court saying that the mere fact that the recovery was in form upon the note was no sufficient ground for reversing the judgment. It is important to note that a different rule is applied when the plaintiff is a mere indorsee or assignee. In *Congressional Tp. No. 11* v. *Weir,* 9 Ind. 224, and *Ottenheimer* v. *Cook,* 57 Tenn. (10 Heisk) 309, it was held that an indorsee must recover, if he recover at all, on the note, and not on the original consideration of it.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—SITUS OF SHIP FOR PURPOSES OF TAXATION.—Certain ocean-going steamships owned by the Southern Pacific Company, a corporation of the State of Kentucky, operated between New York and Galveston, New York and New Orleans, and New Orleans and Havana. These ships were enrolled at New York, and carried the name of that port upon their sterns in pursuance of the enrolling statutes. The State of Kentucky levied a tax upon them, to which the corporation objected, claiming the tax unconstitutional because the situs of the vessels was not in Kentucky. *Held,* that the facts were not sufficient to give the vessels an actual situs in New York; that having gained no actual situs elsewhere they could be taxed at the domicil of the owner, which was to be considered their situs for taxation. *Southern Pacific Co.* v. *Commonwealth of Kentucky on the relation of G. H. Alexander* (1911) 32 Sup. Ct. 13.

The old Roman Law maxim, *"mobilia sequuntur personam"* has been gradually modified until today its full original meaning is no longer accepted by the courts. *People ex rel. Hoyt* v. *Commissioners,* 23 N. Y. 224. This is especially true in the case of intangible movable property. *Catlin* v. *Hull,* 21 Vt. 152; *Finch* v. *York County,* 19 Neb. 50; *People ex rel. Jefferson* v. *Smith,* 88 N. Y. 576. In the case of tangible movables we find the same modifications based on actual situs. Property without the state is *not* taxed if it has acquired an *actual* situs outside. *Fisher* v. *Commissioners,* 19 Kan. 414, and *vice versa, Pacific Coast Ass.* v. *City & County of San Francisco,* 133 Cal. 14, 65 Pac. 16; *Stanford* v. *City & County of San Francisco,* 131 Cal. 34; *People ex rel. United Verde Copper Co.* v. *Feitner et al.,* 165 N. Y. 645, 59 N. E. 1129. In the principal case, the facts failed to show an actual situs in the port of New York, for the mere fact that an ocean-going vessel enters certain ports frequently in the course of trade, does not make any such port the actual situs of the vessel. "She is within the jurisdiction of all or of any one of them temporarily, and for a purpose wholly excluding the idea of permanently abiding in the state." *Hays* v. *Pacific Mail S. S. Co.,* 17 How. 596, 599, 15 L. Ed. 254. "Being in port is only a necessary incident in their proper employment. They are not built to be in a port, but upon the seas." *People ex rel. Pacific Mail S. S. Co.* v. *Tax & A. Comrs.,* 58 N. Y. 242, 246. Having no actual situs, no owner can give to his vessel a taxable situs which is neither his domicil nor the domicil of actual situs of the vessel. The mere right to select the place of enrollment, does not give the right to determine the place of taxation. *St. Louis* v. *Wiggins Ferry Co.,* 11 Wall. 423, 20 L. Ed. 192.